

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF ROCKVILLE
AND
THE ROCKVILLE RECREATION AND PARKS FOUNDATION, INC.**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made by and between the City of Rockville, a municipal corporation located at City Hall, 111 Maryland Avenue, Rockville, Maryland 20850 ("City"), and The Rockville Recreation and Parks Foundation, Inc., a nonstock corporation, organized under the Maryland General Corporation Law, located at 107 W. Jefferson Street, Rockville, Maryland 20850 ("Foundation").

WHEREAS, the City, through its Recreation and Parks Department ("RPD"), pursues the stated mission of promoting participation by all Rockville citizens in diverse, interesting, and high-quality social, recreational, educational, entertainment, fitness, wellness, and leisure programs, events, and opportunities in safe, modern, attractive, environmentally sensitive, and well maintained parks, buildings and other facilities; and

WHEREAS, the City, owns or operates and maintains recreational facilities, buildings, parks, and other real property, and provides a wide variety of programs, events, and services to the diverse Rockville community in furtherance of this mission; and

WHEREAS, the Foundation was established as a charitable organization for charitable and education purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 and the Treasury Regulations; and

WHEREAS, it is the stated purpose of the Foundation to help fund the unmet recreation, park and open space needs in Rockville, Maryland through the raising of private funds to provide additional financial support for the City's parks, facilities and recreational, educational, and environmental programs and projects; and

WHEREAS, the Foundation wishes to support the mission of the City and its RPD, and through the raising of private funds has the opportunity to accomplish more than public funding allows; and

WHEREAS, the Foundation is a separate, legal tax entity organized for the purpose of encouraging voluntary, private, charitable gifts, trusts, contributions, devises, grants, endowments, donations, bequests and other financial support ("Donations") for the benefit of the City's RPD; and

WHEREAS, the manner in which the Foundation shall collect and forward Donations to the City, the type and prioritization of RPD projects, the naming procedure and the process the Foundation shall follow to submit a project for inclusion in the master plan of the RPD, shall be set forth in a policies and procedures manual ("Policies and Procedures Manual"); and

WHEREAS, the City and the Foundation wish to establish the framework for their mutual cooperation and coordination in furtherance of their goals, mission, and purposes; and

WHEREAS, the Foundation wishes to assure the City and its RPD that it will operate effectively and responsibly.

THEREFORE, in consideration of the foregoing recitals and the mutual obligations and promises contained herein, the parties hereto agree as follows:

Section 1. Foundation Documents. The Foundation shall at all times include language substantially similar to the following clauses in its governing documents:

a. Articles of Incorporation. In the event of its liquidation, dissolution, or wind up, and after the payment of its liabilities, all of the assets of the Foundation that are subject to limitations permitting their use only for charitable or similar purposes, shall be distributed to one or more corporations or associations selected by the Board which have entered into an agreement with the City to provide recreation, facilities, and/or parks services in the City, provided that such corporation or association is a qualified charitable organization under relevant federal and state income tax laws. After such distribution, any remaining assets shall be distributed to the City; and

b. Bylaws. The Foundation's Bylaws shall provide that the Mayor and Council appoint three (3) members to the Board of Trustees ("Board") of the Foundation.

Section 2. Foundation Representations. The Foundation represents and acknowledges the following with regard to its operation, creation and purpose:

a. The Foundation is created and operated primarily in support of the interests and goals of the City and its RPD. The Foundation's work will be compatible with these interests, goals and any master plan implemented by the City's RPD;

b. The Foundation will secure, manage and invest privately raised funds solely for the benefit of the RPD's facilities and programs;

c. The Foundation will at all times operate as a private legal entity separate and distinct from the City and its RPD;

d. The Foundation will not interfere with day to day RPD operations;

e. The Foundation agrees to use sound fiscal, auditing, and investment policies and procedures; and

f. The Foundation agrees that it will at all times maintain its status as a tax-exempt, charitable organization under state and federal income tax laws to ensure that Donations received may qualify as deductible, charitable contributions for the donor.

Section 3. Foundation Documents - Maintenance. The Foundation shall keep on file with the City's RPD updated copies of all of its governing documents including the Articles of Incorporation, bylaws and any amendments to these documents. The City's RPD Director or his or her designee shall have the right to review these documents at least annually.

Section 4. Bond and Insurance. The Foundation is responsible for obtaining and maintaining its own general liability insurance, directors' and officers' liability insurance, and a fidelity bond on officers and staff members in reasonable and appropriate amounts as determined by the Board.

Section 5. Accountability and Stewardship. In order to maintain the highest levels of accountability and stewardship, the Foundation agrees to share information with the City as reasonably requested.

Section 6. Donor Solicitation.

6.1. Donor Communication. The Foundation agrees to make the following clear to prospective donors:

a. Responsibility for governance of the Foundation, including the investment of Donations, resides with the Foundation's Board;

b. Checks for Donations to any of the RPD's programs should be made payable to the Rockville Recreation and Parks Foundation;

c. The Foundation shall advise every donor who makes a Donation in excess of \$250 and provides his or her name and address with the Donation, if an administrative fee will be retained by the Foundation; and

d. Advise donors that any restrictive terms and conditions attached to Donations for the City's RPD, including but not limited to Donations made in exchange for naming rights, are subject to the approval of the City.

6.2. Conditions of Donation Acceptance. The Foundation agrees that in accepting Donations, it will:

a. Ensure that Donations designated for specific purposes are compatible with the interest, mission and philosophy of the RPD and the master plans that it implements;

b. Adhere to the Policies and Procedures Manual; and

c. Coordinate its funding goals, programs and campaigns with the City's RPD.

Section 7. Financial Procedures.

7.1. Standards. The Foundation may hold and invest Donations on a short or long-term basis. For this purpose, the Foundation will adhere to the following standards:

a. Prudent Practices. To ensure that Donations are protected and enhanced and that a reasonable investment return is achieved, the Foundation's investment procedures, including the administration of income from investments shall be conducted in accordance with applicable state law, prudent and sound investment practices, and with due regard for the fiduciary responsibilities of the Foundation's Board. The investments must be consistent with the terms of the Donation instrument, if any; and

b. Administration of Income. Income from investments, net of administrative fees, shall be transferred, when appropriate, to the City, in order to fund a RPD project or program.

7.2. Records and Reports

a. Financial Statement and Audits. The Foundation shall maintain financial records in accordance with generally accepted accounting principles and conduct an internal audit or other audit, or report required by the State of Maryland of its financial records each year. Results of the audit and a current list of Foundation officers, directors or trustees, shall be made available to the City; and

b. Annual Report. The Foundation shall prepare an annual report to the City that summarizes the disposition of all funds received by the Foundation to include, but not limited to, those funds that are transferred to the City, and all administrative fees.

Section 8. Foundation - Accountability of Funds to Donors. The Foundation shall provide a report annually to each donor who makes a Donation in excess of \$250 and who provided his or her name and address along with the Donation, regarding the use of a donor's Donation.

Section 9. Financial Commitments Consistent with the Mission and Goals of the City's RPD. The Foundation shall carry out financial commitments and expenditures consistent with the Policies and Procedures Manual, the budget approved by the Board, and the RPD's mission and goals.

Section 10. Inspection of Foundation Records. The Foundation will permit, on reasonable notice, authorized City officials or their designees to inspect all Foundation books and records. To the extent such inspection violates rights to privacy or confidential donor information, such confidential information may be redacted.

Section 11. Compliance Reviews. The City will conduct periodic compliance reviews of the use of Donations. The purpose of such reviews will be to ensure that dispositions of donated funds have complied with the purposes and restrictions set forth by the donors and/or the Foundation and are consistent with the RPD's mission and goals. The scope of the review will be mutually agreed upon in advance by the City and the Foundation. A written report of the results of such review shall be provided to the Foundation.

Section 12. The City's Assistance to the Foundation. As long as the Foundation complies with all provisions of this MOU, the City will assist the Foundation in the following manner:

- a. Allow the Foundation to use the name and images of the City's RPD;
- b. Provide the Foundation with assistance in Foundation activities in the discretion of the Director of the RPD (or his or her designee), and consistent with what is permitted under state and federal law; and
- c. Assist the Foundation by suggesting and recommending donors and contributions to the Foundation.

Section 13. Notice of Non-Compliance - Opportunity to Cure. In the event of the Foundation's non-compliance with any provision of this MOU, the City shall notify the Foundation in writing of the event or practice the City believes does not comply with this MOU. The Foundation shall, within fifteen (15) days from receipt of the notice of non-compliance, either correct the non-compliance or show cause to the Director of the RPD or his or her designee that the Foundation is bringing itself into compliance. Notwithstanding the foregoing, if correction of the non-compliance is not within the control of the Foundation, the Foundation shall provide the City with all documentation from the third party that has such control (for example, the IRS), evidencing the status of the non-compliance, until it is corrected. In the event that the City finds that the Foundation failed to comply or show cause within the fifteen (15) day time period, or is unable to correct non-compliance that is controlled by a third party, as applicable, the City may, at its option, remove all or certain members of the existing Board. The Mayor and Council, pursuant to paragraph 1.b., shall appoint three members of the Board and

those members, along with any remaining members of the existing Board, shall appoint the additional Board members to reconstitute the Foundation Board. In such case, the removed Board member(s) agree to such removal, and to amend or execute such documents as are necessary to facilitate such removal.

Section 14. Termination.

a. In addition to the method of termination provided for in Section 13, this MOU may be terminated by for convenience by either party by delivering written notice of termination to the non-terminating party at least thirty (30) days prior to the effective date of any termination. In the event of such termination, the Foundation shall provide the City with an accounting of all funds in its possession and shall, at the City's option, transfer all of its assets, after payment of its liabilities and other obligations, either (1) to the City to provide recreation, facilities and/or park services, as provided in Section 14(b) below; or (2) to another non profit corporation which has entered into an agreement with the City to provide recreation, facilities, and/or parks services in the City. In either event, the Foundation shall either dissolve after such transfer or, if the Foundation chooses to not dissolve and continue its charitable operations, the Foundation shall evidence that this MOU has been terminated by legally changing its name to delete any reference to the City and shall no longer hold itself out as being in any way affiliated with the City; and

b. The Foundation shall endeavor, whenever possible, prior to any liquidation, dissolution or wind up, to transfer all of its assets, after payment of its liabilities and other obligations, as provided above in Section 13 and Section 14.a. above in accordance with § 3-104 of the Corporations and Associations Article of the Annotated Code of Maryland.

Section 15. Entire Agreement. This MOU represents the parties' entire agreement with respect to the matters specified herein. Any amendment to this MOU must be in writing and signed by both parties.

Section 16. Governing Law and Venue. It is understood that this MOU shall be governed by and construed under and in accordance with the laws of the State of Maryland. Venue for any actions arising under this MOU shall be in the County of Montgomery, Maryland.

Section 17. Severability. Any provision of the MOU that is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.

This Agreement is hereby executed by the duly authorized representatives of the parties as of _____, 2010.

MAYOR AND COUNCIL OF ROCKVILLE

By _____
Scott Ullery

ROCKVILLE RECREATION AND PARKS
FOUNDATION, INC.

By _____
(Name) _____
(Title) _____

As approved as to form and legality:

City Attorney